

**INTERIM CITY MANAGER
EMPLOYMENT AGREEMENT**

Between

The City of Alameda

And

Ann Marie C. Gallant

This Agreement is entered into as of April 1, 2009 by and between the City of Alameda, California, a municipal corporation (the "City"), and Ann Marie Gallant, an individual (the "Interim City Manager").

RECITALS

Whereas, the City Council received a report at a special Council meeting on February 7, 2009, that the down-turn in the national and state economies has dramatically effected the City of Alameda's budget for the current and anticipated fiscal years, such that the City's General Fund and related funds will continue to contend with considerable revenue shortfalls, due to declines in retail sales, home sales, local taxes, interest, fees for service, and state budget subventions; and

Whereas, the City is also experiencing a structural deficit of \$3.5 million in its General Fund, a \$2.6 million deficit in its Internal Services Fund Group, and over \$75 million in unfunded accrued actuarial liability for post-employment benefits other than pension for public safety employees and the City will require pro-active operational and budget decisions to begin to effectively address these liabilities while also building up General Fund and related fund reserves; and

Whereas, the City Council requires the services of an Interim City Manager with specialized financial, budget and organizational skills and experience to guide it through this period of economic challenge; and

Whereas, Ann Marie Gallant has the necessary education, experience, skills and expertise to serve as the City's Interim City Manager to lead the City through this challenging economy and make operational changes necessary to preserve core services and achieve a more efficient, effective and financially sustainable City government; and

Whereas, the City Council of the City (the "City Council") desires to employ Ann Marie Gallant to serve as the Interim City Manager of the City of Alameda,

NOW THEREFORE, in consideration of these recitals and the mutual covenants contained herein, the parties hereto agree as follows:

Terms and Conditions

1. **EMPLOYMENT** The City hereby employs Ann Marie Gallant as its Interim City Manager, and Ann Marie Gallant hereby accepts such employment.
2. **TERM** Interim City Manager shall be hired as a limited term employee for a minimum period of twenty four (24) months, commencing April 1, 2009 and ending March 31, 2011, unless extended by mutual agreement. Such extensions shall be in 90 day increments, at the commencement of which the City Council shall initiate its selection and recruitment procedure for the appointment of a permanent City Manager.

Should the City Council elect to delay its executive search for a City Manager, or elect not to select a candidate at the term of this agreement, this agreement shall automatically renew in 90 day increments as provided herein until such time as the City Council has selected a permanent City Manager or until such time as the City provides the Interim City Manager with timely notice of non-renewal. The City Council shall provide the Interim City Manager with written notice of non-renewal at least 90 days prior to the initial Termination Date or any succeeding Termination Date.

3. **COMMITMENTS AND UNDERSTANDINGS**

A. Interim City Manager

1. Duties and Authority

- (a) The Interim City Manager shall be the chief executive and administrative officer of the City and shall be responsible to the City Council for the proper administration of all affairs of the City.
- (b) The Interim City Manager shall perform all duties of the City Manager as set forth in the Charter of the City of Alameda and the Alameda Municipal Code (the "Municipal Code"), the California Government code, including all operational and implementation decisions consistent with City legislative policies and procedures approved by the City Council, as may be provided from time to time.
- (c) The Interim City Manager shall also serve as Executive Director of the Redevelopment Agency, various City financing authorities, joint powers authorities and any or all related City component units as presently designated.

- (d) The Interim City Manager shall administer and enforce policies established by the City Council and promulgate rules and regulations as necessary to implement such City Council policies.
- (e) To accomplish this, the Interim City Manager shall have the power and shall be required to:
 - (i) Attend all meetings of the City Council, unless excused due to temporary absence, as stated herein, or disability and participate in the discussion of all matters before the City Council. The Interim City Manager shall receive notice of all regular and special meetings of the City Council.
 - (ii) Review all agenda documents before preparing the agenda for any regular or special meeting of the City Council.
 - (iii) Direct the work of all appointed City officers and departments that are the concern and responsibility of the City Council, except those that are directly appointed by or report directly to the City Council.
 - (iv.) Undertake any study or investigation the Interim City Manager believes is necessary or desirable to effectuate the duties herein, and shall make any study or investigation the City Council directs.
 - (v.) Implement changes that the Interim City Manager believes will result in greater efficiency, economy, or improved public service in the organization or administration of City affairs.
 - (vi.) Recommend to the City Council adoption of any and all measures the Interim City Manager may deem necessary or expedient for the health, safety, or welfare of the community, or for the improvement of the City's immediate fiscal condition or long term financial sustainability.
 - (vii) Consolidate or combine offices, positions, departments, or units under the Interim City Manager's jurisdiction and serve as the head of one or more City departments, as deemed necessary and appropriate, consistent with the City Charter and Alameda Municipal Code.

- (viii) Conduct research in administrative practices in order to achieve greater efficiency and economy in City government; develop and recommend to the City Council long-range plans to improve City operations and prepare for future City growth, development, and financial sustainability.
- (ix) Provide management training and develop leadership qualities among department heads and staff as necessary to build a City management team that can plan for, and meet present and future organizational and financial challenges.
- (x) Exercise control of City government in emergencies as authorized by the Municipal Code and California law.

2. Hours of Work

- (a) The Interim City Manager is an exempt employee, but shall engage in those hours of work that are necessary to fulfill the obligations of the City Manager's position. The Interim City Manager does not have established hours of work as the Interim City Manager is expected to be available at all times.
- (b) It is recognized that the Interim City Manager must devote a great deal of time to the business of the City outside of the City's customary office hours, and to that end, the Interim City Manager's schedule of work each day and week may vary in accordance with the work required to be performed.
- (c) For purposes of this contract, a day shall be defined as eight hours.

B. *City Council*

- 1. The City Council is responsible for all legislative decisions and policies for the City of Alameda and shall set policy for the governance and administration of the City, and implement its policies through the Interim City Manager.
- 2. The City Council recognizes that to meet the challenges facing the City it must exercise decisive policy leadership, consistent with its power under the City Charter. Toward this effort, the City Council commits to that time necessary beyond regular City Council meetings to work with the Interim City Manager and staff on setting goals and priorities for City government, and to work on issues that may be inhibiting the maximum

achievement of established City Council goals and policy direction during this interim period.

3. The Interim City Manager shall take orders and instructions from the City Council only when it is sitting as a body.

C. *Mutual Commitments*

1. Progress and Performance Reports

- (a) Progress reports as to the status of implementing City Council policy direction are an important tool for the City Council and Interim City Manager to ensure effective communications about expectations and performance during this critical interim period.
- (b) The City Council recognizes that for the Interim City Manager to respond to its needs, the Interim City Manager must receive the necessary direction from City Council members on the Interim City Manager's progress and performance.
- (c) To ensure that the Interim City Manager receives such feedback, during this challenging interim period, the City Council shall conduct an evaluation of the Interim City Manager's performance every six months, in order to provide such feedback and for the purpose of mid-course corrections.
- (d) The Interim City Manager and the City Council shall create goals and outcome measures that will provide the basis for performance success during this interim management period.
- (e) The City Council and the Interim City Manager shall define such goals and performance objectives as they mutually determine are necessary for the proper operation of the City for the attainment of the City Council's policy objectives, and the City Council and the Interim City Manager shall further establish a relative priority among those goals and performance objectives to ensure that expectations are both reasonable and feasible.
- (f) The review and evaluation shall be in accordance with specific criteria developed jointly by the City Council and the Interim City Manager. Such criteria may be added to or deleted as the City Council may from time to time determine in consultation with the Interim City Manager.

4. COMPENSATION The City agrees to provide the following compensation to the Interim City Manager during the term of the agreement:

A. *Compensation and Required Employer Costs*

1. The salary for the position of contract Interim City Manager shall be \$250,000 annually. City shall pay this salary in bi-weekly payments of \$9615.38, in accord with the City's regular payroll practices, and subject to withholding required by law. The Interim City Manager shall be compensated for any City holiday occurring during the term of this Agreement.
2. Required Employer Costs
 - (a) Medicare
 - (b) Unemployment Compensation
 - (c) California Public Employees Retirement System (CalPERS). The City contracts with CalPERS for retirement benefits. The City shall pay the employer's contribution for participation in CalPERS and the Interim City Manager shall pay the employee's contribution reported as tax deferred contributions paid by the employee (Employee Pick-up" under IRC Section 414(h)(2)).
 - (d) The cost of any fidelity or other bonds required by law for the Interim City Manager.
 - (i) The cost to defend and indemnify the Interim City Manager as provided in Section 7.E below.
 - (ii) Workers Compensation.

B. *Basic Benefits*

1. The Interim City Manager is a temporary employee and, therefore, shall not receive any medical, dental, long term disability or life insurance benefits during the term of this Agreement.
2. The Interim City Manager shall receive up to \$2,500 reimbursement on an annual basis for her attendance at necessary official and other functions

for the City and such other national, regional, state and local governmental groups or committees on which the Interim City Manager may serve as a member.

3. Leave Allowance

- (a) The Interim City Manager shall be given twelve hours of vacation for use as family leave, vacation or rest and recuperation each month, to be accrued on a bi-weekly basis and used only during the term of this Agreement. No unaccrued leave shall be paid at the termination of this Agreement. Eighty hours of this leave shall be credited at the date of execution of this Agreement, for use by the Interim City Manager as necessary and appropriate. Bi-weekly accrual shall begin after the first 80 hours would have been earned.
- (b) The Interim City Manager shall be given sick leave at the rate of eight hours per month, accrued on a bi-weekly basis, to be used as needed during the term of this Agreement.

5. SEPARATION

A. *Resignation*

The Interim City Manager may resign at any time with 90 days advance written notice of the effective date of the resignation.

B. *Termination and Removal*

- 1. Interim City Manager is an at-will employee serving at the pleasure of the City Council under the authority of Charter Section 2-2(A).
- 2. The City Council may remove the Interim City Manager at any time, with or without cause, by a majority vote of its members. Notice of contract termination shall be provided to the Interim City Manager with 90 days advance notice to ensure a successful transition to either a subsequent Interim or permanent City Manager. The Interim city Manager shall remain on payroll for the 90 day period and receive full pay and benefits.
- 3. Failure to provide a 90-day advance notice in writing will require a 90-day payment-in-lieu of notice.

C. *Involuntary Resignation*

- 1. "Involuntary resignation" as used in this Section means Interim City Manager's discharge or dismissal by the City, or her resignation following

a request by the City Council, approved by a majority vote of the entire City Council, that she resign. The termination and removal provisions of Sections 5 B (2) and 5 B (3) apply to an "involuntary resignation."

2. Involuntary resignation does not include Interim City Manager's death, incapacity due to injury or illness (physical or mental), dismissal for willful misconduct, malfeasance, dishonesty for personal gain, or following conviction of a felony, or misdemeanor affecting her ability to be covered under a fidelity bond, nor Interim City Manager's resignation for any reason other than so stated in this Section.

D. *Separation for Cause*

1. Notwithstanding the provisions of Section 6.D, the Interim City Manager may be terminated for cause. As used in this section, "cause" shall mean only one or more of the following:
 - (a) Conviction of a felony, or a misdemeanor affecting her ability to be covered under a fidelity bond.
 - (b) Abuse of drugs or alcohol that materially affect the performance of the City Manager's duties; or
 - (c) Repeated and protracted unexcused absences from the Interim City Manager's office and duties.
2. In the event the City terminates the Interim City Manager for cause, then the City may terminate this Agreement immediately, and the Interim City Manager shall be entitled to only the compensation accrued up to the date of termination, and such other termination benefits and payments as may be required by law

6. MISCELLANEOUS PROVISIONS

A. *Provisions that Survive Termination*

Only the sections of this Agreement that by their terms are reasonably intended to survive the termination of this Agreement shall survive the termination of this Agreement.

B. *Amendments*

This Agreement may be amended at any time by mutual agreement of the City Council and the Interim City Manager. Any amendments are to be negotiated and adopted by the City Council in writing.

C. *Conflict of Interest*

1. The Interim City Manager shall not engage in any business or transaction or have a financial or other personal interest or association, direct or indirect, which is in conflict with the proper discharge of official duties or would tend to impair independence of judgment or action in the performance of official duties. Personal as distinguished from financial interest included an interest arising from blood or marriage relationships or close business, personal, or political associations. This section shall not serve to prohibit independent acts or other forms of enterprise during those hours not covered by active City employment, providing such acts do not constitute a conflict of interest as defined herein.
2. The Interim City Manager shall also be subject to the conflict of interest provisions of the California Government Code and any conflict of interest code applicable to the Interim city Manager's City employment.
3. The Interim City Manager is responsible for submitting to the City Clerk the appropriate Conflict of Interest Statement at the time of appointment, annually thereafter, and at the time of separation from the position.

D. *Indemnification*

1. To the full extent of the law as provided by the California Torts Claims Act (Government Code Section 810 et. seq.) and the indemnity provisions of this Agreement, whichever shall provide the greatest protection to the Interim City Manager, the City shall defend and indemnify the Interim City Manager against and for all loses sustained by the Interim City Manager indirect consequences of the discharge of the Interim City Manager's duties on the City's behalf for the period of the Interim City Manager's employment.
2. The City shall defend, hold harmless and indemnify the Interim City Manager against any tort, professional liability claim or demand or other legal action, whether groundless or otherwise, arising out of an alleged act or omission occurring in the performance of the Interim City Manager's duties as Interim City Manager. The City may compromise and settle any such claim or suit and pay the amount of any settlement or judgment rendered thereon.
3. Whenever the Interim City Manager shall be sued for damages arising out of the performance of the Interim City Manager's duties, the City shall provide defense counsel for the Interim City Manager in such suit and indemnify the Interim City Manager from any judgment rendered against the Interim City Manager; provided that such indemnity shall not extend

to any judgment for damages arising out of any willful wrongdoing. This indemnification shall extend beyond termination of employment and the otherwise expiration of this Agreement to provide protection for any such acts undertaken or committed in the Interim City Manager's capacity as Interim City Manager, regardless of whether the notice of filing of a lawsuit occurs during or following employment with the City. This indemnity provision shall survive the termination of the Agreement and is in addition to any other rights or remedies that the Interim City Manager may have under the law.

4. The City and all parties claiming under or through it, hereby waives all rights of subrogation and contribution against the Interim City Manager, while acting within the scope of the Interim City Manager's duties, from all claims, losses and liabilities arising out of or incident to activities or operations performed by or on behalf of the city or any party affiliated with or otherwise claiming under or through it, regardless of any prior, concurrent, or subsequent active or passive negligence by the Interim City Manager.
5. In the event that the Interim City Manager shall serve as the chief executive of other city-related legal entities as provided in Section 3.A(1)(c) above, then each provision of this Section 7.E shall be equally applicable to each City-related legal entity as though set forth in an indemnity agreement between the Interim City Manager and that legal entity. The City hereby guarantees the performance of this indemnity obligation by the City-related legal entity, and shall indemnify and hold the Interim City Manager harmless against any failure or refusal by City-related legal entity to perform its obligations under this Section 7.E.

E. *Severability*

If any clause, sentence, part, section, or portion of this Agreement is found by a court of competent jurisdiction to be illegal or unenforceable, such clause, sentence, part, section or portion so found shall be regarded as though it were not part of this Agreement and the remaining parts of this Agreement shall be fully binding and enforceable by the Parties hereto.

F. *Jurisdiction and Venue*

This Agreement shall be construed in accordance with the laws of the State of California, and the Parties agree that venue shall be in the City of Alameda, California

G. *Entire Agreement*

This Contract represents the entire agreement of the Parties, and no representations have been made or relied upon except as set forth herein. This Contract may be amended or modified only by a written, fully executed agreement of the Parties.

H. *Notice*

Any notice, amendments, or additions to this Agreement, including change of address of either party during the term of this Agreement, which the Interim City Manager or the City shall be required, or may desire, to make shall be in writing and shall be sent by prepaid first class mail or hand-delivered to the respective Parties as follows:

City:
Office of the Mayor
2263 Santa Clara Ave.
Alameda, CA 94501

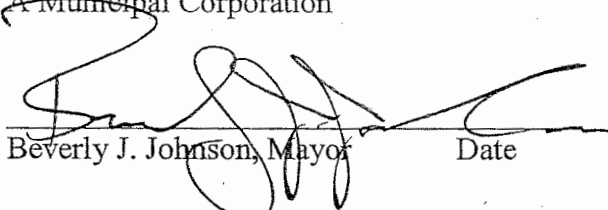
Interim City Manager:
Ann Marie Gallant
2263 Santa Clara Ave., Suite 320
Alameda, CA 94501

7. EXECUTION

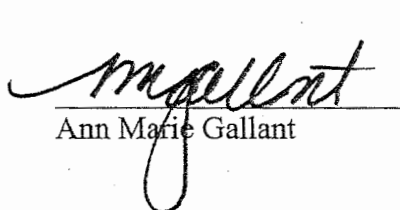
"City"
CITY OF ALAMEDA
A Municipal Corporation

"Interim City Manager"

By:


Beverly J. Johnson, Mayor

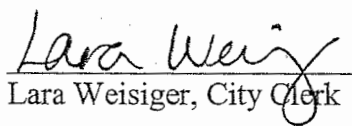
Date


Ann Marie Gallant

Date 4/1/09

ATTEST:

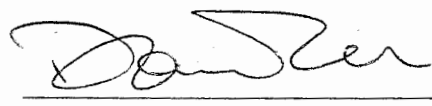
By:


Lara Weisiger, City Clerk

Date 9/6/09

APPROVED AS TO FORM:

By:


City Attorney

Date 4/2/09